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13 August 2007
by express



Hon. Vernon Williams
Secretary
Surface Transportation Board
395 E Street SW
Washington, D.C. 20044

ENTERED
Office of Proceedings

AUG 14 2007

Part of
Public Record

Re: PYCO Industries -- Alternative
Rail Service -- South Plains
Switching, Ltd., F.D. 34889

Supplemental Statement in light
of August 6 Demand Letter
from SAW General Manager

Immediate distribution requested

Dear Mr. Williams:

Enclosed for filing please find a supplemental statement by PYCO Industries (cleared with West Texas and Lubbock) concerning a letter dated August 6, 2007, which WTL received from the new and former General Manager (Larry Wisener) of South Plains Switching (SAW). This letter, unavailable when PYCO prepared its pending motion for permission to inspect and to repair, bears on that motion. If leave is necessary to file this document and explanatory memorandum, leave respectfully is hereby sought.

As PYCO also indicates, the demand letter and Landreth report dated August 3, 2007 which it conveys reaffirm the propriety of immediately granting the relief PYCO seeks in its motion for permission to enter SAW property for inspection, repair, and weed control.

Very truly,

Charles H. Montange
for PYCO Industries, Inc.

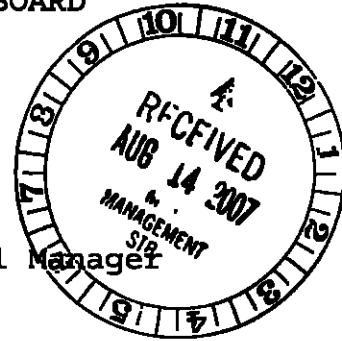
Encls.

cc. counsel per certificate of service (w/encl)
Mr. McLaren (for PYCO) (w/encl)

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --)
SOUTH PLAINS SWITCHING Ltd.)

Supplemental Statement
in light of
August 6 Demand Letter from SAW General Manager



On or about July 16, 2007, Larry Wisener officially resumed his former role of General Manager of incumbent rail carrier South Plains Switching Ltd. (SAW) in Lubbock.¹ Since Mr. Wisener's formal resumption of the General Manager function at SAW, PYCO Industries, Inc. (PYCO) and its alternative rail service provider West Texas and Lubbock Railway (WTL) have faced new or renewed obstacles to the provision of adequate rail service to PYCO in this docket.

These problems have resulted in two motions by PYCO to this Board:

¹ This Board originally authorized alternative rail service pursuant to 49 C.F.R. Part 1146 in PYCO Industries-- Alternative Rail Service -- South Plains Switching, Ltd., F.D. 34802, served January 26, 2006. By petition filed two weeks later on February 9, 2006, SAW sought termination of Part 1146 alternative rail service partly on the ground that its old general manager (Mr. Larry Wisener) had resigned, and its new manager, Delilah Wisener (spouse of Larry Wisener) had "made a sincere commitment to provide adequate rail service...." See PYCO Industries -- Alternative Rail Service -- South Plains Switching, Ltd. F.D. 34802, served Feb. 24, 2006, at p. 3.

By letter dated July 16, 2007, SAW's Lubbock legal counsel (Mr. James Gorsuch) informed Mr. Ed Ellis (president of WTL) that "[f]rom this point forward, the General Manager of South Plains Switching, Ltd., Co., will be Larry Wisener...." See Exhibit B to PYCO's Motion to Inspect Permit Inspection and Repair in F.D. 34889, under cover later dated August 6, 2007.

Because Mr. Ellis was on vacation and Mr. Gorsuch did not serve WTL's legal counsel, WTL and PYCO did not become aware of the change effectively until on or about August 3, 2007.

-- one under cover letter dated July 31, 2007 (filed August 1), to confirm PYCO's right to use the private industrial crossing between its cottonseed stockpile and Plant No. 1,

-- and the second under cover letter dated August 6, 2007 (and recorded as filed on August 8) seeking an order authorizing WTL, PYCO, and their contractors to inspect and to repair failing SAW trackage so that alternative service to PYCO could continue. PYCO's motion dated August 6 suggested that the Board modify the existing operating protocol governing track used by WTL to provide service to PYCO to allow WTL and its contractors (or PYCO and its contractors under WTL supervision) to enter that track to inspect and to repair it, and to control weeds.

In an order served late on Friday, August 10, this Board required SAW to respond to both motions by August 15.

Reason for Supplement

After PYCO filed its motion to inspect and to repair dated August 6, PYCO learned that on the same day, Larry Wisener apparently faxed to WTL a demand letter, addressed to Mr. H.M. McConville (WTL's Vice President of Operations). The demand was accompanied by a track inspection report prepared by SAW's witness Edward Landreth dated August 3, 2007.

We will first discuss the Landreth report, and then the Wisener demand. Both are relevant to PYCO's pending motion to inspect and to repair.

1. Landreth August 3, 2007 report. The Landreth August 3 report purportedly encompassed track covered by PYCO's

"Alternative Two" in PYCO's feeder line application in F D. 34890. This trackage includes trackage over and beyond what is employed by WTL to provide alternative rail service to PYCO.

Landreth begins his report by incorrectly asserting that WTL is responsible for maintenance and repair of the track.² To the contrary, SAW is responsible for maintenance and repair.

In any event, in PYCO's F.D. 34889 petition, PYCO anticipated that SAW would not maintain its trackage and expressly requested that this Board authorize parties other than SAW to inspect and to repair the track. This Board expressly refused this relief in its Decision served November 21, 2006 in this docket, slip op. p. 6, ordering paragraph 5

Landreth claims to have inspected the tracks in July 2006. If one reviews the record in the feeder line proceeding (F.D. 34890), one quickly sees that Mr. Landreth at that point was attempting to provide evidence supporting SAW's position that the tracks were in surprisingly good condition, presumably for valuation purposes. But Landreth's August 3 report claims that in the past year, the track suddenly has "deteriorate[d] from Class 2 FRA Track Safety Standard to an Excepted FRA Track Safety Standard." Landreth Aug. 3, 2007 Report at the 3d unnumbered page of text. Our point here is that Landreth now finally admits what PYCO has maintained all along: the track is

² Landreth repeatedly cites 49 C.F.R. § 213.5(e) as placing responsibility on WTL to inspect and to maintain the track. This regulation only applies to directed service. WTL is not providing directed service in F.D. 34889.

in deplorable condition.

Landreth especially emphasizes as "disheartening ... the lack of vegetation control...." Id. He also lists a stripped joint in track 1, many switch points needing repair, issues at public and private grade crossings, and worker safety issues. The stripped joint and the vegetation issue precipitated PYCO's motion dated August 6, 2007, for permission to inspect and repair.

2. Wisener August 6 demand letter to WTL's McConville. In his letter to Mr. McConville dated August 6, 2007, Larry Wisener as General Manager of SAW stated that

"the exceptions noted in the [Landreth] inspection are to be repaired and completed within 30 days of the date of this letter."

Wisener shows faxed copies of this demand being sent to FRA, STB, and to his attorneys. PYCO and WTL counsel received a copy of the demand letter from Mr. Wisener via WTL on August 8.

As Mr. McConville indicated in his Declaration served with PYCO's motion under the August 6 cover letter, SAW heretofore has denied entry to WTL to perform anything but actual switching for PYCO. Wisener's August 6 demand letter does not authorize entry by WTL or anyone to inspect, repair, or control weeds.

It appears to PYCO and WTL that Mr. Wisener was trying, and may still be trying, to set up a situation in which SAW claims WTL is in trespass if it inspects and makes repairs, but is somehow still obligated to make repairs. SAW may be attempting

to force WTL to embargo the line, or SAW is building a case for SAW itself to embargo the line, or SAW will seek to have the Federal Railroad Administration shut the line down, or to cite WTL for violations. Certainly the conduct of Mr. Wisener as SAW's past and current General Manager cannot remotely be deemed "cooperative," and an intent of some kind to throw another monkey wrench into alternative service is apparent.

Implications

Since the Landreth August 3 report admits that there are serious track issues and weed control issues that should be addressed, it follows that PYCO's motion for an order authorizing entry for inspection and repair, and weed control, should immediately be granted. While neither PYCO nor WTL have inspected the line (we do not have permission) to verify all the alleged deficiencies Landreth purports to identify, WTL has advised PYCO, as PYCO has indicated to this Board, that weed control and the joint on Track 1 must be promptly addressed.

SAW has consistently refused throughout these proceedings to participate in the daily conference calls ordered by this Board to coordinate rail service in Lubbock. Indeed, SAW's refusal rendered the calls pointless. As Mr. McConville's Declaration indicates, SAW does not return calls from WTL representatives. Commencing mid-July, WTL has appealed to SAW concerning the Track 1 problem. SAW declined to return calls,

choosing instead to respond a misdirected³ letter to Mr. Ellis on July 16 and the Wisener demand to Mr. McConville on August 6. In addition, SAW has operated on the alternative service trackage outside its protocol hours. In the circumstances, PYCO and WTL are concerned about safety of WTL workers and contractors when they perform work on SAW facilities. Moreover, PYCO and WTL do not wish to be harassed by claims of trespass or lawsuits by SAW in state court when WTL or contractors enter to perform work on the premises. Although SAW's rail counsel now tells this Board in an August 13 filing that WTL may enter, SAW in the past "has consistently advised WTL personnel that it was not permissible to enter SAW property for the purposes of repair and maintenance...." PYCO motion to permit inspection in F.D. 34889, under cover letter of August 6, 2007, Exhibit A, paragraph 4 (Declaration of H.M. McConville) (emphasis added). See also id. (Exhibit G, Declaration of Robert Lacy).

In order to address these concerns, PYCO and WTL request that the operating protocol be modified expressly to provide that WTL and its contractors under WTL supervision may enter all SAW premises employed to provide service to PYCO for purposes of inspection and repair, and weed control, during the periods those premises are assigned to WTL use under the protocol, and

³ We say "misdirected" because SAW's attorney (Mr. Gorsuch) did not have permission or urgent need to communicate directly with Mr. Ellis, and Mr. Gorsuch did not copy WTL's counsel or PYCO's counsel on the letter. As a result, no one in responsibility at WTL was aware of Gorsuch's letter until August 3.

that SAW must stay clear of the premises during those periods unless WTL authorizes otherwise in writing.⁴

In a paper filed on August 13 in this proceeding, SAW's rail counsel states that SAW no longer objects to WTL entering the premises to inspect or to repair, although SAW continues to object to PYCO (ostensibly because it is not a common carrier). Given the problems that WTL and PYCO have encountered with SAW in the past, SAW's August 13 filing should be treated as supportive of the protocol modification suggested above, and not as an alternative to it.

As to SAW's continued objection to entry by PYCO, PYCO clearly is the petitioner and applicant in a series of related proceedings involving inadequate rail service by SAW in Lubbock, and is the petitioner/applicant in this proceeding. PYCO may properly seek relief. PYCO has assembled considerable rail and supplies for purposes of immediate rehabilitation of the track (should PYCO be permitted to acquire same pursuant to the feeder line application proceeding). WTL intends to employ rail and supplies furnished by PYCO for purposes of repairs, and in order to save funds, to contract with PYCO to control the weeds under WTL supervision. Since WTL will supervise any PYCO

⁴ Contrary to claims by Landreth (or SAW), SAW is legally and financially responsible for maintenance and repair. However, that issue need not be reserved at this time; what is urgent is getting repairs and weed control accomplished. WTL and PYCO thus reiterate that this authorization to enter to inspect and to repair track, and to control weeds, should be without prejudice to their right to seek a set-off or make a claim against SAW for all costs which they incur for inspection, maintenance and weed control on SAW trackage.

track activity, it is irrelevant that PYCO is not a common carrier. However, SAW's opposition underscores the necessity of a protocol change to ensure that this cost-effective and efficient approach will not be obstructed by SAW.

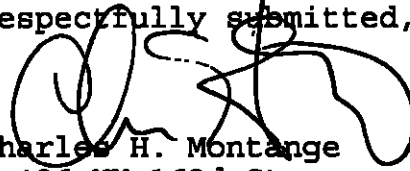
Nothing herein should be construed as an admission that WTL is responsible for repairs or for weed control on SAW premises under any legal theory. To the contrary, that obligation rests with SAW. However, the issue now is not to resolve who ends up paying the bill; the issue is continued safe rail service. To this end, WTL and PYCO seek an order authorizing entry to inspect and to repair the track, and to control the weeds. Given the Landreth August 3 report, SAW has no grounds to resist such an order.

To the extent leave is necessary for PYCO to make this supplemental filing, PYCO requests leave in the interest of a full record and continued safe rail service

Conclusion

The operating protocol should be immediately modified to permit WTL (and any contractor for WTL, including PYCO, acting under WTL supervision) to enter SAW's premises during protocol hours already assigned to WTL for the additional purposes of (a) inspection, (b) maintenance and repair, and (c) weed control.

Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Counsel for PYCO Industries,
Inc.

Of counsel:

Gary McLaren
Phillips & McLaren
3305 66th St., Suite 1A
Lubbock, TX 79413
(806) 788-0609

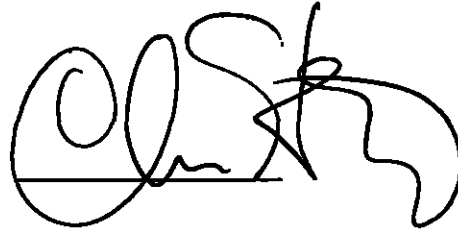
Exhibit -- demand letter from Larry Wisener dated August 6 and
accompanying Landreth August 3 report

Certificate of Service

I certify service by tendering this document for express
delivery (next business day) upon the following counsel of
record this 13th day of August, 2007:

Thomas McFarland
208 South LaSalle St., Suite 1890
Chicago, IL 60606-1112

John D. Heffner, Esq.
1750 K Street, N.W., Suite 350
Washington, D.C. 20006



Exhibit

Demand dated August 6, 2007
by Larry Wisener as G.M for SAW

IOWA PACIFIC HOLDINGS, LLC



118 S. CLINTON ST. SUITE 300, CHICAGO, IL 60661

≡≡≡ FAX COVER SHEET ≡≡≡

ATTENTION: SEE BELOW

COMPANY: _____

FAX NUMBER: _____

FROM: H.M. McCONVILLE

PHONE NUMBER: 608 359 1088

DATE/TIME: AUG 8TH 3⁴⁵ PM

OF PAGES INCLUDING THIS PAGE: 27

COMMENTS:

TO: STEVE GREGORY

JOHN HEFFNER

CHARLES MONTAGNE

[Signature]

South Plains Switching, Ltd. Co.
P. O. Box 64299 **Lubbock, Texas 79464**
PHO: (806) 828-4841 **FAX: (806) 828-4863**

FAX COVER SHEET

DATE: 08/06/07

TO: Mike Mc Connilla 312 466-9589

FROM: Larry Wisener

COMMENTS: _____

.....

Total Number of Pages Sent, Including this page: 26

South Plains Switching, Ltd. Co.
P. O. BOX 64299 **LUBBOCK, TEXAS 79464**
PHO: (806)828-4841 **FAX: (806)828-4863**

August 6, 2007

Mr. H.M. McConville
Vice President of Operations
Permian Basin Railway
118 South Clinton Street, Ste. 400
Chicago, IL 60661
Via FAX: 312 466 9589

Dear Mr. McConville:

A Class I track inspection was conducted on July 26, 2007 by Landreth Engineering, LLC, as requested by SAW. (Copy enclosed)

WTLC's responsibility for track maintenance is clearly set forth in the CFR title 49, Track Safety Standards, Part 213.5(e). SAW is requesting to be furnished copies of track inspections performed on SAW tracks given to the WTLC by the Surface Transportation Board (STB).

Copies of SAW's report by Landreth Engineering are being sent STB and the FRA. The exceptions noted in the inspection are to be repaired and completed within 30 days of date of this letter. A copy of completed work report is to be submitted to SAW office.



Larry D. Wisener
General Manager

Cc: Thomas F. McFarland via Fax
Cc: Surface Transportation Board via Fax
Cc: FRA; Mark Tessler via mail
Cc: James Gorsuch via Fax

enclosures

**ENGINEERING INSPECTION REPORT
OF
RAILROAD ASSETS**

LISTED AS

**PYCO INDUSTRIES, INC. ALTERNATIVE 2
STB FINANCE DOCKET 34890
A PORTION OF TRackage OWNED BY
SOUTH PLAINS SWITCHING, LTD., CO.**

OPERATED BY

**WEST TEXAS & LUBBOCK RAILWAY COMPANY, INC.
UNDER STB DIRECTED SERVICE ORDER
STB FINANCE DOCKET 34802
(DECISION JANUARY 25, 2006)**

INSPECTED FOR:

SOUTH PLAINS SWITCHING, LTD , CO

INSPECTION DATE:

July 23, 2007

INSPECTED BY:

**LANDRETH ENGINEERING, LLC
12231 Academy Rd., NE #301-284
Albuquerque, NM 87111**

DATE OF REPORT

August 3, 2007

A INTRODUCTION

South Plains Switching, Ltd., Co. (SAW) engaged Landreth Engineering, LLC to inspect and evaluate the maintenance condition of approximately 7.47 miles of rail line owned by South Plains Switching, Ltd., Co. and currently operated pursuant to a Surface Transportation Board Directed Service Order by the West Texas & Lubbock Railway Company, Inc

Landreth Engineering, LLC understands that this report may be utilized in a Civil Court and/or a Surface Transportation Board (STB) proceeding. Qualifications for Landreth Engineering, LLC are contained in Attachment "A"

The objective of this inspection was to determine the change in the maintenance condition of the track and real estate since the previous inspection by Landreth Engineering, LLC on July 18, 2006 and this inspection conducted on July 23, 2007 for the track and underlying real estate within STB Finance Docket 34890 identified as PYCO Industries, Inc. Alternative 2 as of July 23, 2007. This report presents findings as to the changed maintenance condition of the track structure (rail assets) and real estate.

B SCOPE OF INSPECTION

The railroad assets are located in Lubbock, Lubbock County, Texas. Landreth Engineering, LLC, utilized the track segments contained in the July 2006 inspection report as a guide to the track currently operated and maintained by the West Texas & Lubbock Railway Company, Inc. (WTL). The line segments described in the footnote of STB Finance Docket 34890 (Document 37144) as PYCO Alternative 2 and in the PYCO Feeder Line Application STB Finance Docket 34844 (Document 218497) are listed below for convenience:

TRACKS EAST OF BNSF MAIN LINE**CLIC 231**

(AT ICC No. 65) &	1,368 TF
(FWD Interchange Track 2) (FWD ICC No. 19)	1,094 TF

<u>TEAM No. 9298</u> SAW Main Line (Original FW&D Main Line)	4,667 TF
(BNSF Removed 1,280 TF of Original FW&D Main Line)	

<u>TEAM No. 9200</u> FWD Siding (FWD ICC No. 92)	3,949 TF
---------------------------------------------------------	----------

Trackage Serving Attebury Grain, LLC

CLIC No. 310 (AT ICC No. 127) Trackage to Attebury	769 TF
CLIC No. 311 (AT ICC No. 128)	255 TF
(FWD ICC No. 33)	419 TF
CLIC No. 312 (AT ICC No. 129)	129 TF
(FWD ICC No. 32)	81 TF
CLIC No. 313 (AT ICC No. 130)	49 TF
(FWD ICC No. 31)	1,474 TF

Trackage Serving Farmers Cooperative Compress

CLIC No. 310 (AT ICC No. 127) Trackage to Farmers	1,035 TF
(FWD ICC No. 37)	3,486 TF
CLIC No. 325 (FWD ICC No. 100)	398 TF
CLIC No. 324 (FWD ICC No. 101)	432 TF
CLIC No. 323 (FWD ICC No. 65) (To 50 th Street)	3,900 TF
Runaround Track (FWD ICC No. 102)	<u>1,253 TF</u>

Total Trackage East of BNSF Main Line	24,758 TF (4.69 Miles)
<u>TRACKS WEST OF BNSF MAIN LINE</u>	
<u>TEAM No. 9201</u> – SAW Yard Track No. 1 (FWD ICC No. 20)	3,330 TF
<u>TEAM No. 9205</u> – SAW Yard Track No. 5 (FWD ICC No. 34)	3,332 TF
<u>TEAM No. ??</u> – FWD ICC No. 137 – Connection Yard Track No. 5 To North Side PYCO Plant 1	98 TF
<u>TEAM No. 9204</u> – SAW Yard Track No. 4 (FWD ICC No. 46) West Yard Lead & West Portion Yard Track No. 4	2,170 TF
<u>TEAM No. ??</u> – FWD ICC No. 23 – Connection Yard Track No. 4 To South Side PYCO Plant 1	155 TF
<u>TEAM No. ??</u> – FWD ICC No. 44 – Connection ICC No. 23 to PYCO Track No. 403	66 TF
<u>TEAM No. 9206</u> (FWD ICC No. 73) – West Lead BN Industrial District (PYCO refers to as West Leg of Wye) Portion of Track & Property Previously Sold to Choo – Choo Properties	100 TF
<u>TEAM No. 9298</u> – SAW Main Line (FWD Original Main Line) West of BNSF R/W Line to East R/W Line of Avenue A (7/23/07 WTL operates BNSF R/W to EOT)	5,439 TF
<u>Total Trackage West of BNSF Main Line</u>	14,890 TF (2.78 Miles)
<u>Trackage segments PYCO Alternative 2</u>	39,448 TF (7.47 Miles)

C. BACKGROUND

Landreth Engineering originally inspected the tracks identified as PYCO ALTERNATIVE 2 during July 17 & 18, 2006 and provided a written report dated July 27, 2006 to the South Plains Switching, Ltd., Co.

Prior to the July 2006 inspection the tracks were operated and inspected in accordance with FRA Track Safety Standards for Excepted Track. The July 2006 inspection found that the tracks were being operated as Excepted Track but the level of maintenance would meet the FRA Track Safety Standards for Class 2 track. After the results of this inspection, the SAW gave notice to the FRA (Effective August 28, 2006) that the tracks were to be operated and inspected in accordance with FRA Track Safety Standards for Class 1 track.

The tracks identified as PYCO ALTERNATIVE 2 are operated by the West Texas & Lubbock Railway Company, Inc. (WTL) in accordance with a Surface Transportation Board Directed Service Order (Finance Docket 34802 originally served January 26, 2006).

West Texas & Lubbock Railway Company, Inc. which is directed by the Surface Transportation Board to provide service is considered the owner of the track for the purposes of the compliance with of the Federal Railroad Administration (FRA) Track Safety Standards (49CFR§213.5(e)).

The South Plains Switching, Ltd., Co. advises that they have not observed any WTL maintenance activities in the last year on or around the tracks operated pursuant to the Directed Service Order and have no previous track inspection reports available as the SAW has not been furnished copy of any WTL track inspection records.

In accordance with the FRA Track Safety Standards (49CFR§213.5(e)) the WTL is responsible for track maintenance for all of the of the SAW trackage located on the East Side of the BNSF Main Line. On the west side of the BNSF Main Line the WTL is responsible for the SAW main line and the west end of the SAW yard including Yard Tracks 1,5 & the west end of Yard Track 4. The SAW utilizes the east end of the SAW yard utilizing Yard Tracks 2, 3 and the east end of Yard Track 4.

The South Plains Switching, Ltd., Co. requested that the inspection of the track be conducted in accordance with the Class 1 FRA Track Safety Standards

D. FIELD INSPECTION OF TRackage IDENTIFIED AS PYCO ALTERNATIVE 2

Attached as Exhibit 1 is a summary sheet (dated August 1, 2007) showing the inspection results and suggested remedial actions. This inspection notes not only the defects in accordance with the Class 1 FRA Track Safety Standards but also locations in violation of the safe footing and clearance requirements of the Texas Clearance Law.

Generally the defects without a defect code on the summary sheet require remedial action if the track is inspected in accordance with Class 2 FRA Track Safety Standards (which was the level of the track maintenance last year).

Attached as Exhibit 2 are photographs contained in the July 27, 2006 inspection report related as near as possible to photographs taken in connection with this report to provide a side by side comparison of 2006 & 2007 photographs

Attached as Exhibit 3 are photographs obtained during my July 23, 2007 inspection that further illustrates the change in maintenance practices since the West Texas & Lubbock Railway Company, Inc. was designated by the STB as the Directed Service Operator of the trackage identified as PYCO Alternative 2.

The line and surface of the tracks has deteriorated since the last inspection on July 18, 2006 (1 year ago) and no evidence was observed of WTL track maintenance. The WTL has allowed the trackage to deteriorate from a Class 2 FRA Track Safety Standard to an Excepted FRA Track Safety Standard. This is readily illustrated by looking at the number of failed joint bars in Yard Track 1 which would be a defect in the Class 2 FRA Track Safety Standards

One of the most disheartening changes in the maintenance is the lack of vegetation control primarily adjacent to the Main Line and Yard Tracks 5 & 1 between the Jupiter Road and US 87 Highway (Avenue A) grade crossings and the trackage providing access to Altbury Grain and Farmers Cooperative Compress from the SAW main on the East Side of the BNSF main line.

The main line rubber grade crossing surface installed in the US 87 (Avenue A) (4 lane road) on the West Side of the SAW Yard has failed and one center panel was 4" above the top of rail. This failure is not only of immediate concern to the safety of vehicular traffic but to railroad

operations. Immediate action should be taken to repair the grade crossing surface at this location.

The private grade crossing surfaces for PYCO and Farmers Cooperative Compress are 3" and 3 1/2" above top of rail which are low speed private crossings. These grade crossings are primarily a concern to the safety of railroad operations.

The prairie dog holes and vegetation adjacent to the tracks are an immediate concern. Safe footing or walkways need to be maintained at a minimum within 8 1/2' of each side of the centerline of the track. This concern is addressed in the FRA track safety standards for vegetation and the Texas Clearance Law.

The 7" stripped joint in the south rail of track 1 also needs immediate attention. This location can be corrected by replacing the rail on the gapped side of the joint bar by removing 15'-5" of the existing rail and replacing it with a 16' rail.

Inspection of the switch points in 2006 showed a few points with 8" of wear and the 2007 inspection shows the need for replacement of two switch points and that 5 switches now have wear in excess of 8" and should be inspected every 30 days.

Edward W Landreth, PE
Date of Report August 3, 2007

EXHIBIT 3 – Photographs Dated July 23, 2007



EXHIBIT 3 – Photographs Dated July 23, 2007

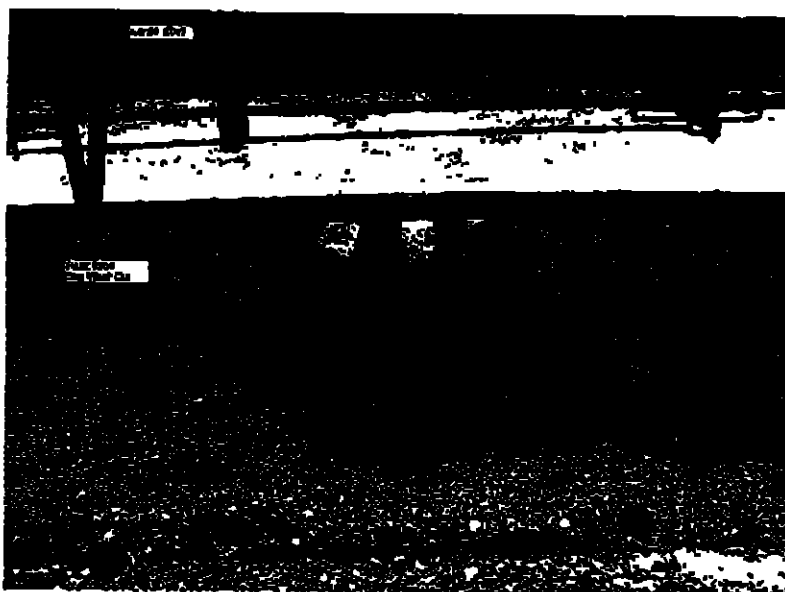


EXHIBIT 3 - Photographs Dated July 23, 2007

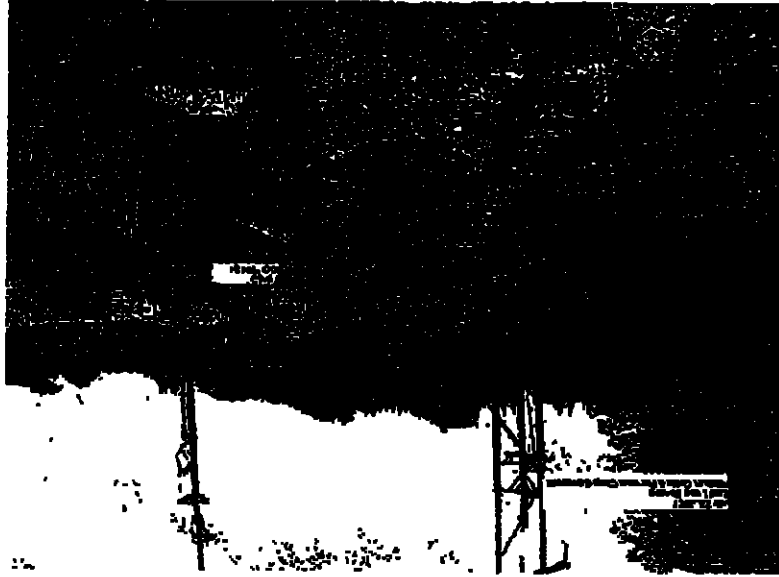
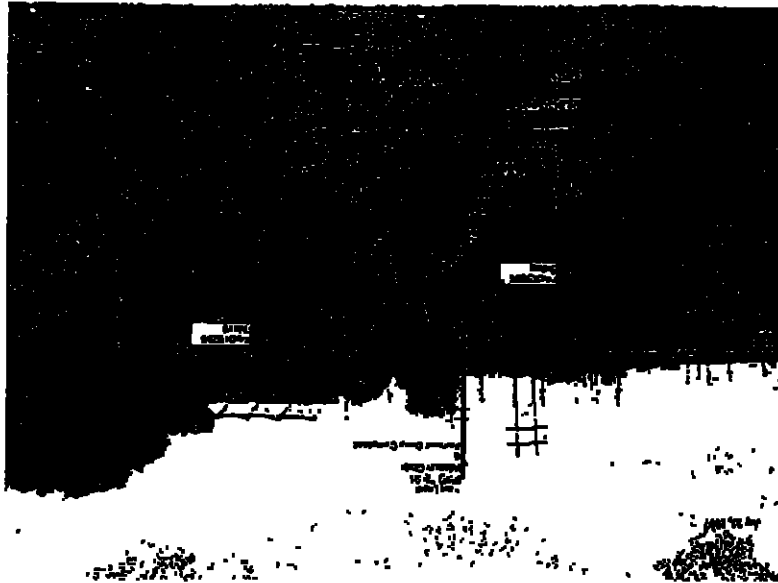




EXHIBIT 3 - Photographs Dated July 23, 2007



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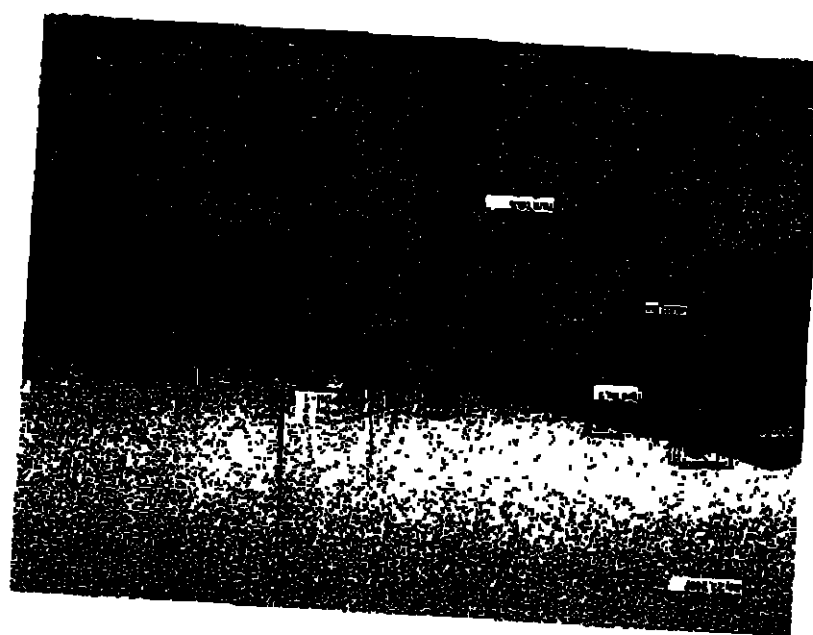


EXHIBIT 3 - Photographs Dated July 23, 2007





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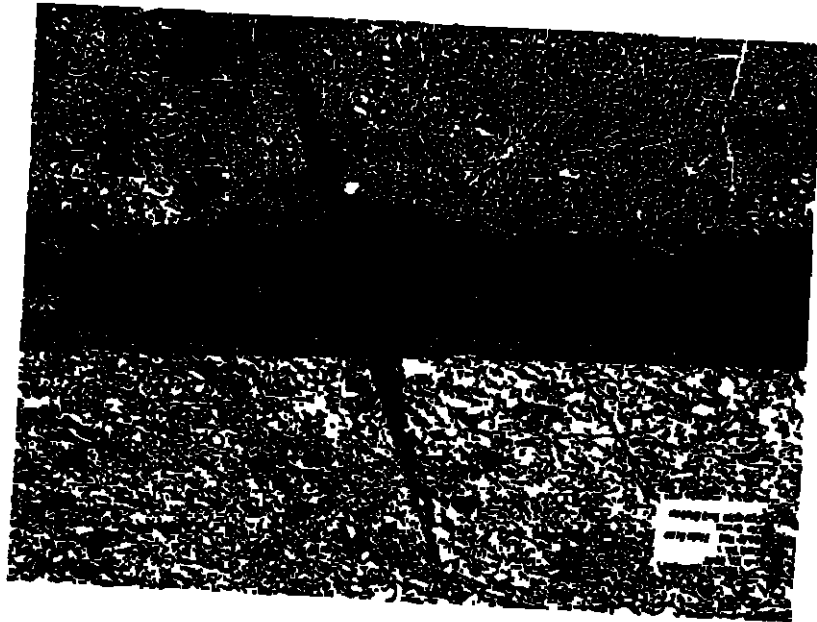
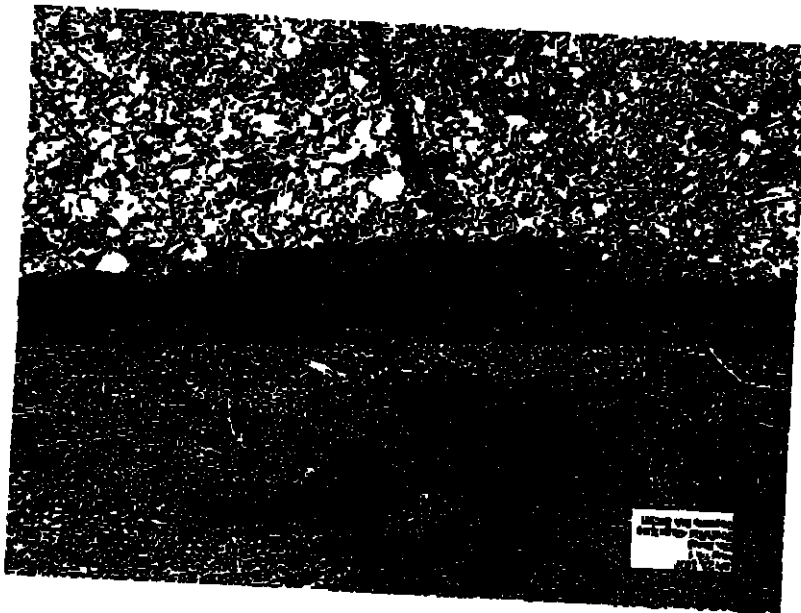
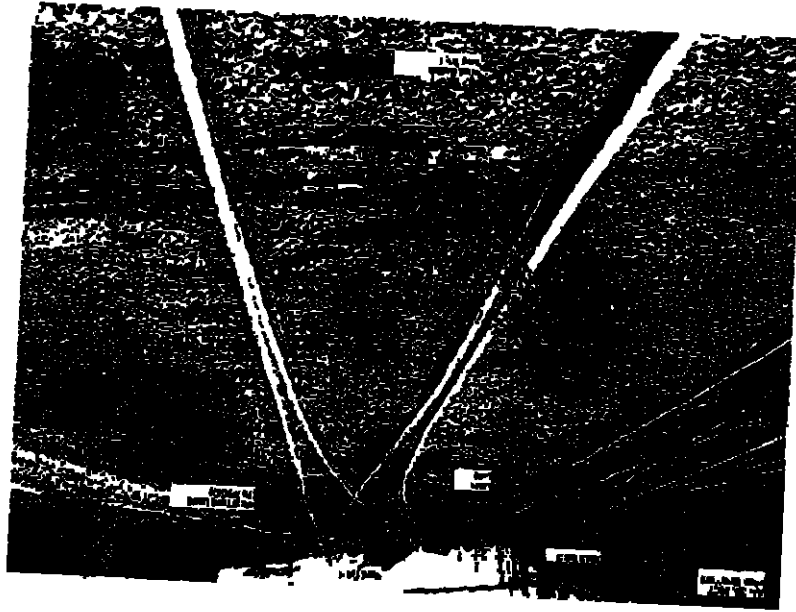
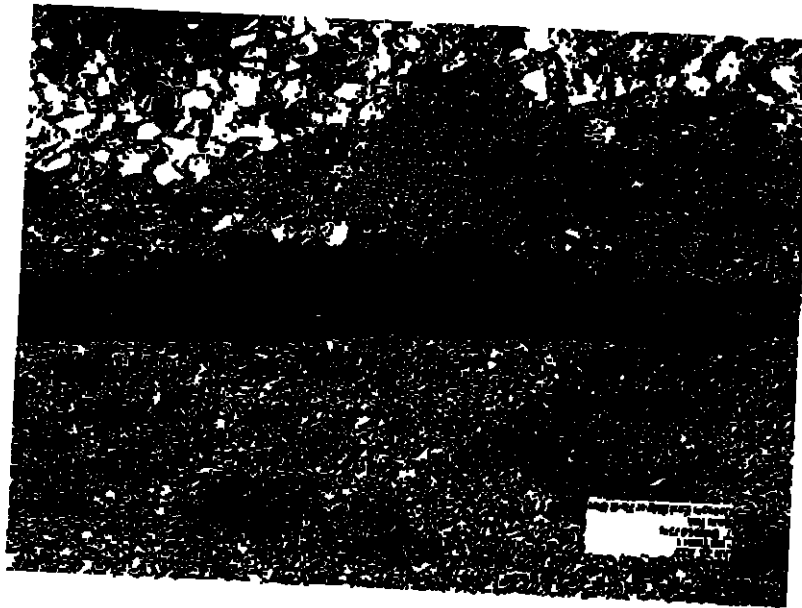


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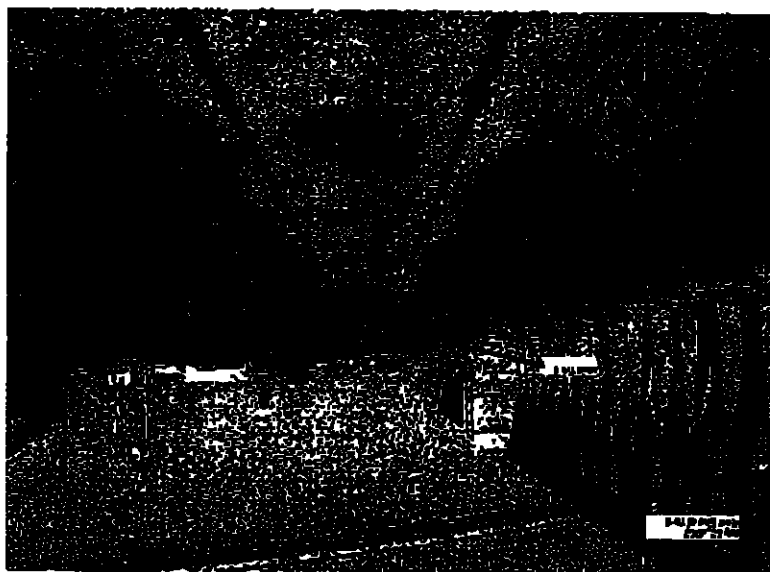


EXHIBIT 3 – Photographs Dated July 23, 2007

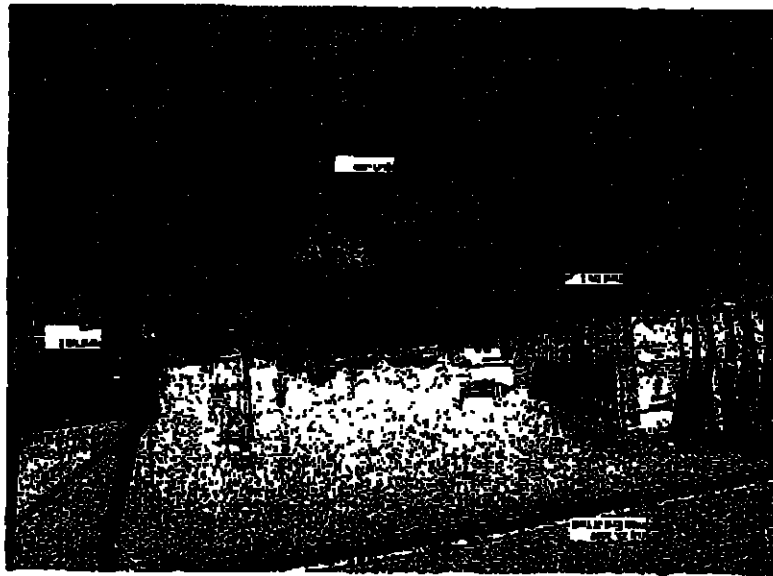
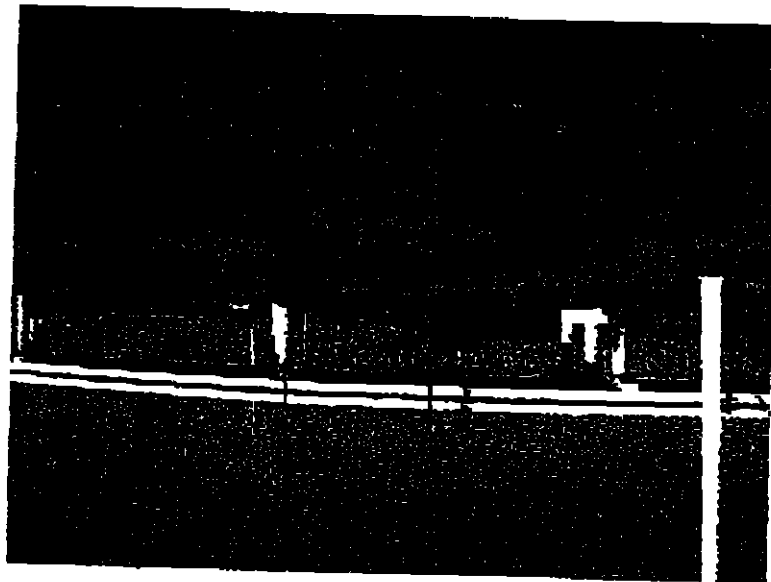


EXHIBIT 3 – Photographs Dated July 23, 2007

Attachment 2

July 18, 2006



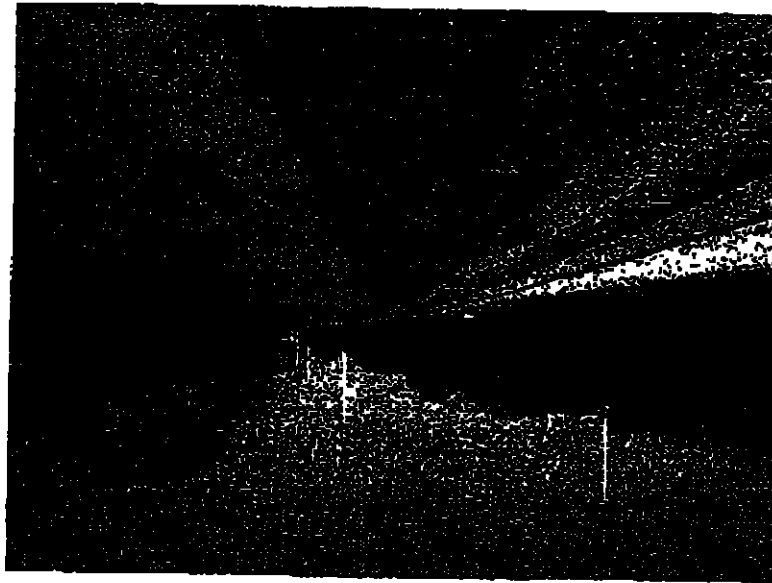
East Side of BNSF Main Line
Center Line of Removed FWD Main Line
Looking west towards Quilt Avenue OP
Track on right side of photograph is CLIC 231
(Portion of FWD ICC No. 85) 85# Rail Section

July 23, 2007



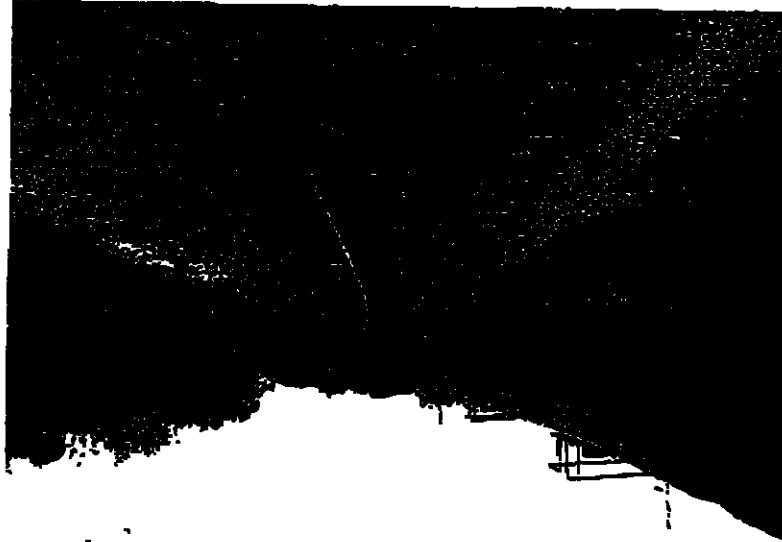
Attachment 2

July 18, 2006



East Side of BNSF Main Line
Looking RR West on Center Line TEAM Track No. 9298 (SAW Main Line) 85# Rail
TEAM Track No. 9200 (90# Siding) is on the South Side of the Main Line

July 23, 2007

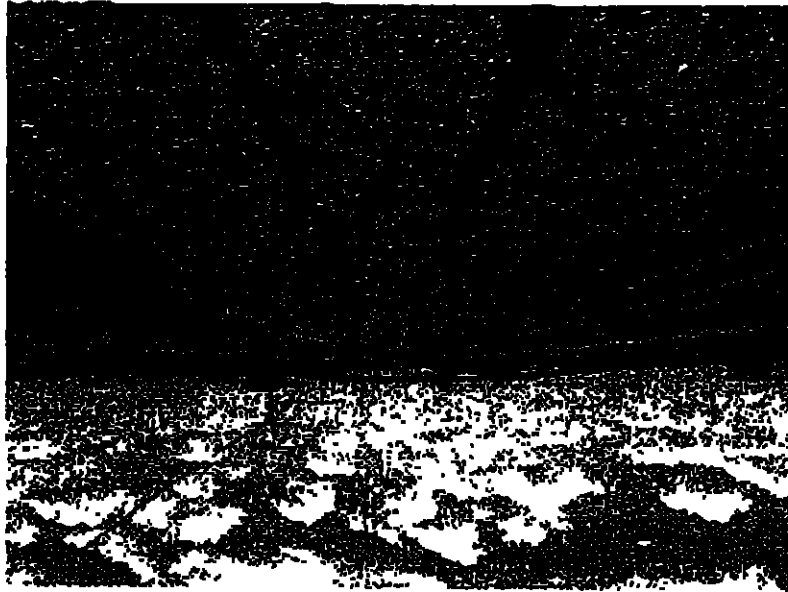


Attachment 2



July 18, 2008

East Side of BNSF Main Line
CLIC Track 0310 (90# Rail) Looking South towards Atteberry & Farmers Compress

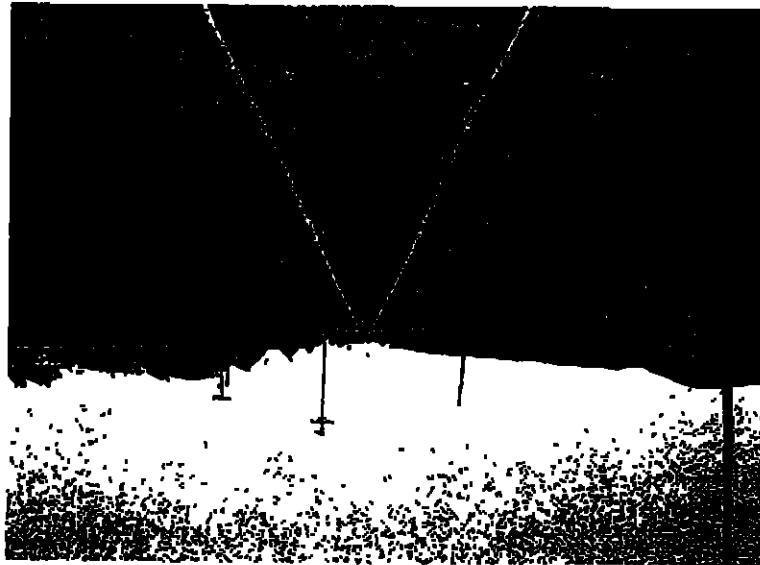


July 23, 2007

East Side of BNSF Main Line
CLIC Track 0310 (90# Rail) Looking North from Atteberry & Farmers Compress

Attachment 2

July 18, 2008

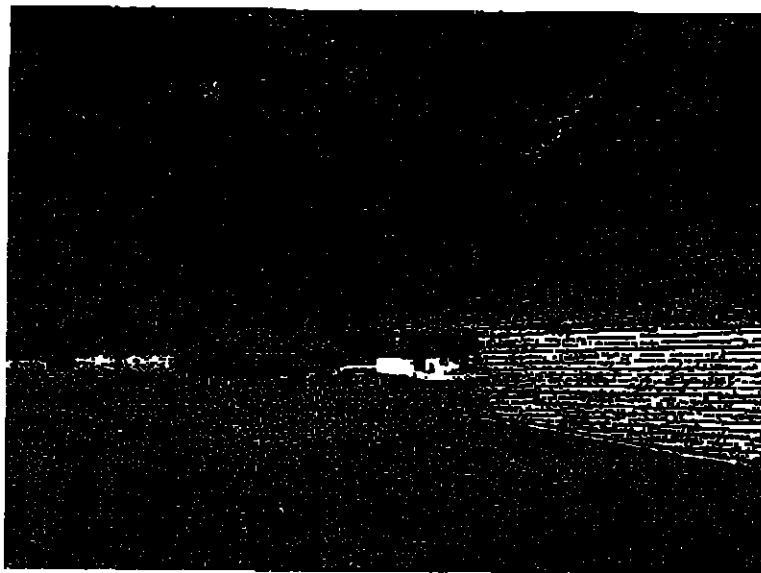


CLIC Track 0310 (FWD ICC No 37) within Farmers Compass
Looking Geographic East

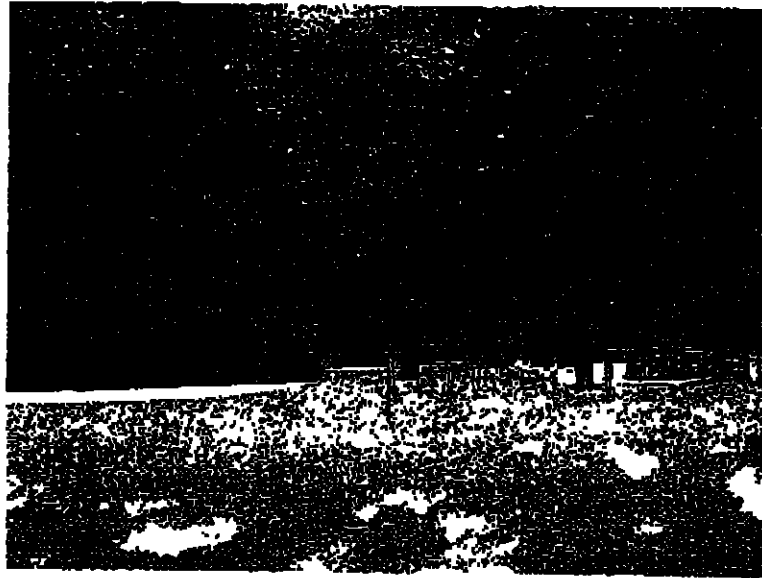
July 23, 2007



Attachment 2

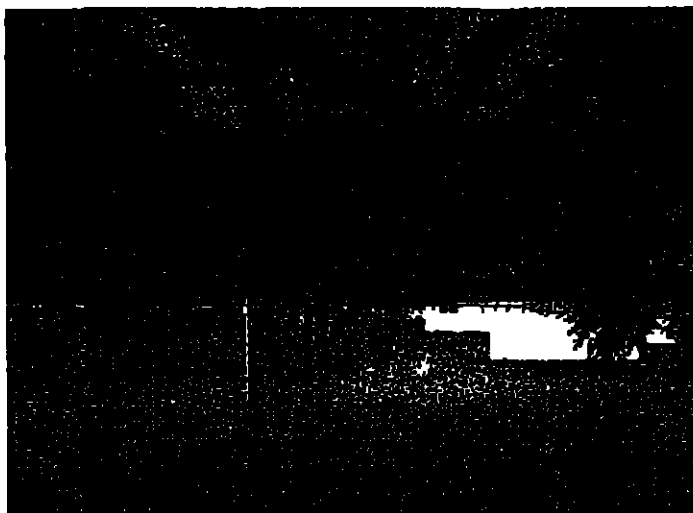


July 18, 2008
CLIC Track No. 323 FWD ICC No. 65 within Farmers Compass
Looking Geographically North

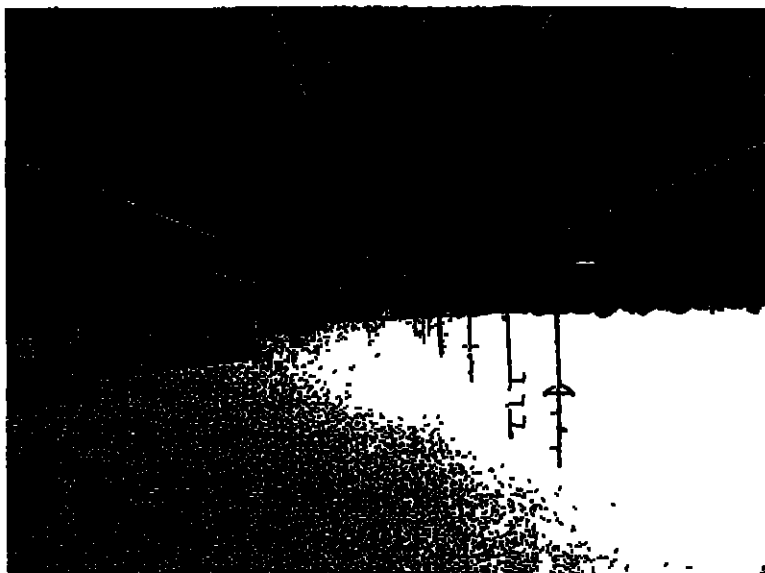


July 23, 2007
CLIC Track No. 323 FWD ICC No. 65 within Farmers Compass
Looking Geographically South

Attachment 2



July 18, 2006
West Side of BNSF Main Line
TEAM Track No. 8298 - SAW Main Line (Looking West from HB Orchard Lead)

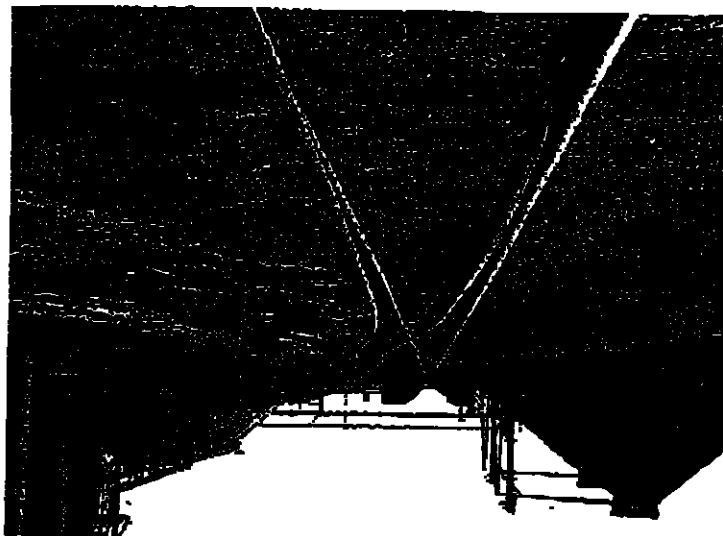


July 23, 2007
West Side of BNSF Main Line
TEAM Track No. 8298 - SAW Main Line (Looking East from Jupiter Road)

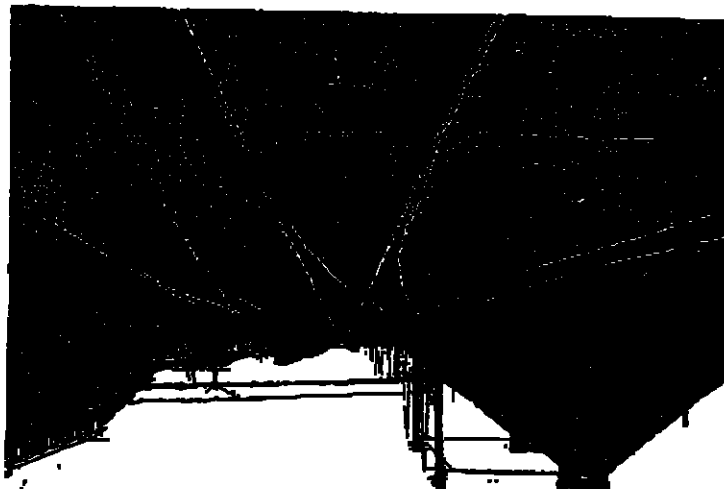
Attachment 2



Attachment 2



July 18, 2006
West End SAW Yard
TEAM No. 9298 (SAW Main Line) at West Switch for West Yard Lead



July 23, 2007
West End SAW Yard
TEAM No. 9298 (SAW Main Line) at West Switch Yard Track 5